

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

D [REDACTED] C [REDACTED], an infant, by his Mother and Natural Guardian, LORNA SMITH, and LORNA SMITH, individually,

Plaintiffs,

- against -

THE CITY OF NEW YORK, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity, and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities,

Defendants.

Index No:

VERIFIED COMPLAINT

Plaintiffs, D [REDACTED] C [REDACTED] an infant, by his Mother and Natural Guardian, LORNA SMITH, and LORNA SMITH, individually, by their attorneys, OKUN, ODDO & BABAT, P.C., as and for their Complaint, respectfully allege, upon information and belief:

PRELIMINARY STATEMENT

1. The plaintiff, LORNA SMITH, at all times herein mentioned was and still is a resident of the County of Bronx and the State of New York.

2. The plaintiff, [REDACTED] an infant, by his Mother and Natural Guardian, LORNA SMITH, at all times herein mentioned was and still is a resident of the County of Bronx and the State of New York.

3. The defendant, THE CITY OF NEW YORK, at all times herein mentioned, was and still is a municipal corporation organized and existing under the laws of the State of New York, with its principal place of business situated in the County of New York and the State of New York.

4. At all times hereinafter mentioned, defendant, THE CITY OF NEW YORK, maintained, controlled, operated and supervised the New York City Police Department.

5. Defendant, THE CITY OF NEW YORK, was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. Defendant, THE CITY OF NEW YORK, maintains the New York City Police

Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, The City of New York.

7. At all times hereinafter mentioned, the individually named defendants, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

8. At all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

9. Each and all of the acts of the defendants, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, alleged herein were done by said defendants while acting within the scope of their employment by defendant, THE CITY OF NEW YORK.

10. Each and all of the acts of the defendants, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, alleged herein were done by said defendants while acting in furtherance of their employment by defendant, THE CITY OF NEW YORK.

11. Pursuant to General Municipal Law §50-e, the plaintiff, LORNA SMITH, filed a Notice of Claim related to the June 4, 2013 incident with defendants on August 28, 2013, less than ninety days from the date of occurrence.

12. Pursuant to General Municipal Law §50-e, the plaintiff, [REDACTED] an infant, by his Mother and Natural Guardian, LORNA SMITH, filed a Notice of Claim related to the June 4, 2013 incident with defendants on or about August 30, 2013, less than ninety days from

the date of occurrence.

13. Pursuant to General Municipal Law §50-I, more than thirty days have elapsed since the service of the Notices of Claim, and the defendant, THE CITY OF NEW YORK, has failed and refused to adjust and/or make payment upon plaintiff's claim.

14. This action is commenced within one year and ninety days from the happening of the event upon which this claim is based, and in compliance with General Municipal Law §50-I.

STATEMENT OF FACTS

15. On June 4, 2013 , at approximately, 4:00 p.m., plaintiff, LORNA SMITH, resided at the premises located at 3035 Wallace Avenue, Apt. 1A, Bronx, New York 10467.

16. On June 4, 2013 , at approximately, 4:00 p.m., infant-plaintiff, [REDACTED] resided at the premises located at 3035 Wallace Avenue, Apt. 1A, Bronx, New York 10467.

17. On June 4, 2013, at approximately, 4:00 p.m., defendants, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities members of the New York City Police Department, dressed in uniform and swat gear, forcibly entered the home of plaintiffs, located at 3035 Wallace Avenue, Apt. 1A, Bronx, New York 10467, without a warrant.

18. If defendants did have a search warrant for plaintiffs' dwelling it was issued upon the basis of extremely unreliable information, and the police did not follow NYPD policies and procedures in obtaining and executing such a warrant.

19. At that time and place, the individually named defendant officers approached the plaintiff, LORNA SMITH, and placed her under arrest.

20. At and/or about that time and place, the individually named defendant officers handcuffed the plaintiff's, LORNA SMITH, arms tightly behind her back.

21. At that time and place, the individually named defendant officers approached the infant-plaintiff, [REDACTED] and placed him under arrest.

22. At and/or about that time and place, the individually named defendant officers

handcuffed the infant-plaintiff, [REDACTED] arms tightly behind his back.

23. At that time and place, the individually named defendant officers searched the infant-plaintiff, [REDACTED]

24. At and/or about that time and place, the individually named defendant officers conducted a search of plaintiffs home without consent and without a warrant.

25. At and/or about that time, the individually named defendant officers placed infant-plaintiff, [REDACTED] in a patrol car.

26. At and/or about that time, the individually named defendant officers placed LORNA SMITH, in a patrol car.

27. Thereafter, the infant-plaintiff [REDACTED] was released after being handcuffed for approximately an hour.

28. Thereafter, the plaintiff, LORNA SMITH, was transferred to a nearby police precinct.

29. Upon arrival at the nearby police precinct, plaintiff, LORNA SMITH, was searched.

30. At no time did the defendant officers possess probable cause to arrest the plaintiffs.

31. At no time did the defendant officers possess information that would lead a reasonable officer to believe s/he had probable cause to arrest the plaintiffs.

32. At no time did the defendant officers possess a warrant to conduct a search of plaintiffs home.

33. At no time did the defendant officers possess reasonable suspicion that the plaintiff had committed any crime or violation of law.

34. At no time on or about June 4, 2013, did the plaintiff, LORNA SMITH, commit any crime or violation of law whatsoever.

35. At no time on or about June 4, 2013, did the infant-plaintiff, [REDACTED]
[REDACTED] commit any crime or violation of law whatsoever.

36. In connection with plaintiff, LORNA SMITH, the defendants filled out false and/or misleading police reports and forwarded them to prosecutors at the Bronx County District Attorney's Office.

37. As a result of the defendants' conduct, the plaintiff, LORNA SMITH, was charged

with unlawful possession of marijuana.

38. Thereafter, defendants repeatedly gave false and misleading testimony regarding the facts and circumstances of plaintiff's, LORNA SMITH, arrest.

39. Specifically, defendants falsely, knowingly, and maliciously alleged that plaintiff, LORNA SMITH, was in possession of marijuana.

40. As a direct result of his unlawful arrest and the unlawful acts of the defendants, infant-plaintiff, [REDACTED] spent approximately (1) hour in handcuffs.

41. As a direct result of his unlawful arrest and the unlawful acts of the defendants, plaintiff, LORNA SMITH, spent approximately (7) hours in custody.

42. Additionally, as a direct result of the defendants' unlawful actions, plaintiff, LORNA SMITH, has, to date, spent approximately four (4) months making numerous court appearances.

43. Despite defendants actions on June 4, 2013, all charges against the plaintiff, LORNA SMITH, were dismissed in their entirety.

44. As a result of the foregoing, plaintiff, LORNA SMITH, sustained, *inter alia*, physical pain, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of her constitutional rights.

45. As a result of the foregoing, infant-plaintiff, [REDACTED] sustained, *inter alia*, physical pain, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of his constitutional rights.

FIRST CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR ASSAULT AND BATTERY UNDER NEW YORK LAW
FOR PLAINTIFF LORNA SMITH

46. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

47. At the aforesaid place and time, defendants, THE CITY OF NEW YORK, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, did cause plaintiff, LORNA SMITH, to be unlawfully assaulted and battered, without cause or provocation.

48. The aforesaid assault and battery were caused by defendants, THE CITY OF NEW YORK, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, while acting within the scope of their employment by defendant, THE CITY OF NEW YORK.

49. As a result of the aforesaid assault and battery, plaintiff, LORNA SMITH, was severely and seriously injured, both physically and mentally and is entitled to damages in excess of the monetary jurisdictional limits of all lower courts.

**SECOND CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR FALSE ARREST AND IMPRISONMENT UNDER NEW YORK LAW
FOR PLAINTIFF LORNA SMITH**

50. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

51. As a result of the aforesaid conduct by defendants, plaintiff was subjected to illegal, improper and false arrest by the defendants, taken into custody, and caused to be falsely imprisoned, detained, and confined without probable cause, privilege or consent.

52. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, she was put in fear for his safety, and she was humiliated and subjected to handcuffing and other physical restraints, without probable cause.

53. As a result of the foregoing plaintiff, LORNA SMITH, was caused to sustain serious physical and emotional injuries and is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower Courts.

**THIRD CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT FOR
NEGLIGENT HIRING, TRAINING, AND RETENTION UNDER NEW YORK LAW
FOR PLAINTIFF LORNA SMITH**

54. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

54. Defendant, THE CITY OF NEW YORK, and the New York City Police Department, through their agents, servants, and/or employees, were negligent in the screening, hiring, training,

retention and supervision of its employees and failed to take such necessary and proper steps as to prevent the occurrence described above.

55. As a result of the foregoing, plaintiffs liberties was restricted for an extended period of time, she was put in fear for her safety, and she was humiliated and subjected to handcuffing, and other physical restraints, without probable cause, privilege, or immunity.

56. By reason of the foregoing, plaintiff, LORNA SMITH, is entitled to damages in excess of the monetary jurisdictional limits of all lower courts.

**FOURTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR MALICIOUS PROSECUTION UNDER NEW YORK LAW
FOR PLAINTIFF LORNA SMITH**

57. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

58. Defendants misrepresented and falsified evidence before the Bronx County District Attorney.

59. Defendants did not make a complete and full statement of facts to the District Attorney.

60. Defendants withheld exculpatory evidence from the District Attorney.

61. Defendants were directly and actively involved in the initiation of criminal proceedings against plaintiff, LORNA SMITH.

62. Defendants lacked probable cause to initiate criminal proceedings against plaintiff, LORNA SMITH.

63. Defendants acted with malice in initiating criminal proceedings against plaintiff, LORNA SMITH.

64. Defendants were directly and actively involved in the continuation of criminal proceedings against plaintiff, LORNA SMITH.

65. Defendants lacked probable cause to continue criminal proceedings against plaintiff, LORNA SMITH.

66. Defendants misrepresented and falsified evidence throughout all phases of the criminal proceedings.

67. Specifically, defendants falsely, maliciously, and knowingly alleged that plaintiff was in possession of marijuana on June 4, 2013.

68. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal charges were dismissed in their entirety..

69. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, she was put in fear for her safety, and she was humiliated and subjected to handcuffing and other physical restraints without probable cause.

70. By reason of all the foregoing, plaintiff, LORNA SMITH, is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower courts.

FIFTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
UNDER NEW YORK LAW FOR PLAINTIFF LORNA SMITH

71. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

72. The aforementioned conduct, including but not limited to the aforementioned restriction of plaintiffs liberties for an extended period of time, placing the plaintiff in fear for her safety, and humiliating and subjecting the plaintiff to handcuffing, and other physical restraints, were extreme and outrageous, and exceeded all reasonable bounds of decency.

73. The aforementioned conduct was committed by the individually named defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

74. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

75. The aforementioned conduct was intentional and done for the sole purpose of causing severe emotional distress to plaintiff.

76. As a result of the aforementioned conduct, plaintiff suffered severe emotional distress, and physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

**SIXTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR RELIEF FOR DEPRIVATION OF FEDERAL RIGHTS UNDER 42 U.S.C. § 1983
FOR PLAINTIFF LORNA SMITH**

77. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

78. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

79. All of the aforementioned acts deprived plaintiff, LORNA SMITH, of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

80. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers with all the actual and/or apparent authority attendant thereto.

81. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

82. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

**SEVENTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR FALSE ARREST UNDER 42 U.S.C. § 1983 FOR PLAINTIFF LORNA SMITH**

83. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

84. As a result of the aforesaid conduct by defendants, plaintiff was subjected to illegal, improper and false arrest by the defendants, taken into custody, and caused to be falsely imprisoned, detained, and confined without any probable cause, privilege or consent.

85. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, she was put in fear for her safety, and she was humiliated and subjected to handcuffing and

other physical restraints, without probable cause.

EIGHTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR MALICIOUS PROSECUTION UNDER 42 U.S.C. § 1983
FOR PLAINTIFF LORNA SMITH

86. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

87. Defendants misrepresented and falsified evidence before the Bronx County District Attorney.

88. Defendants did not make a complete and full statement of facts to the District Attorney.

89. Defendants withheld exculpatory evidence from the District Attorney.

90. Defendants were directly and actively involved in the initiation of criminal proceedings against plaintiff, LORNA SMITH.

91. Defendants lacked probable cause to initiate criminal proceedings against plaintiff, LORNA SMITH.

92. Defendants acted with malice in initiating criminal proceedings against plaintiff, LORNA SMITH.

93. Defendants were directly and actively involved in the continuation of criminal proceedings against plaintiff, LORNA SMITH.

94. Defendants lacked probable cause to continue criminal proceedings against plaintiff, LORNA SMITH.

95. Defendants misrepresented and falsified evidence throughout all phases of the criminal proceedings.

96. Specifically, defendants falsely, maliciously, and knowingly alleged that plaintiff was in unlawful possession of marijuana.

97. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal charges were dismissed in their entirety.

98. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, she was put in fear for her safety, and she was humiliated without probable cause or

justification.

NINTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR RELIEF FOR UNLAWFUL SEARCH UNDER 42 U.S.C. § 1983
FOR PLAINTIFF LORNA SMITH

99. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

100. As a result of the foregoing, plaintiff, LORNA SMITH, was subjected to an unreasonable and intrusive search of her home and her person that shocks the conscience in violation of her rights to due process and to be free from unreasonable search, as secured by the Constitution of the United States.

101. As a result of the aforesaid conduct by defendants, plaintiff's person and possessions were illegally, improperly, and unreasonably searched without a valid warrant, probable cause, privilege or consent, in violation of his constitutional rights as secured by the United States Constitution.

TENTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR RELIEF FOR MUNICIPAL LIABILITY UNDER 42 U.S.C. § 1983
FOR PLAINTIFF LORNA SMITH

102. Plaintiff, LORNA SMITH, repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

103. Defendants arrested and incarcerated plaintiff, LORNA SMITH, in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize plaintiff's liberty, well-being, safety and constitutional rights.

104. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials, with all the actual and/or apparent authority attendant thereto.

105. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

106. Those customs, policies, patterns, and practices include, but are not limited to:

- i. requiring officers to make a predetermined number of arrests and/or issue a predetermined number of summonses within a predetermined time frame;
- ii. requiring precincts to record a predetermined number of arrests and/or issue a predetermined number of summonses within a predetermined time frame;
- iii. failing to take any measures to correct unconstitutional behavior when brought to the attention of supervisors and/or policy makers;
- iv. failing to properly train police officers in the requirements of the United States Constitution.

107. The aforesaid customs, policies, usages, practices, procedures and rules of the city of New York and the New York City Police Department directly cause, *inter alia*, the following unconstitutional outcomes:

- i. arresting individuals regardless of probable cause in order to inflate the officer's arrest statistics;
- ii. arresting individuals regardless of probable cause in order to positively affect precinct-wide statistics;
- iii. falsifying evidence and testimony to support those arrests;
- iv. falsifying evidence and testimony to cover up police misconduct;
- v. subjecting individuals to intrusive strip searches in the absence of particularized suspicion.

108. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constitute a deliberate indifference to the safety, well-being and constitutional rights of plaintiff, LORNA SMITH.

109. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted a deliberate indifference to the safety, well-being and constitutional rights of plaintiff.

110. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiff as alleged herein.

111. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by plaintiff as alleged herein.

112. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiff was incarcerated unlawfully.

113. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of plaintiff.

114. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers, and were directly responsible for the violation of plaintiff's constitutional rights.

115. All of the foregoing acts by defendants deprived plaintiff of federally protected rights, including, but not limited to, the rights:

- i. not to be deprived of liberty without due process of law;
- ii. to be free from seizures and arrest not based upon probable cause;
- iii. to be free from search not based upon the constitutionally mandated level of cause or suspicion;
- iv. to be free from unwarranted and malicious criminal prosecution;
- iv. to receive equal protection under the law.

FIRST CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR ASSAULT AND BATTERY UNDER NEW YORK LAW
FOR INFANT-PLAINTIFF [REDACTED]

116. Infant-plaintiff, [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

117. At the aforesaid place and time, defendants, THE CITY OF NEW YORK, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, did cause plaintiff, DEVONTE CHEATHAM, an infant, by his Mother and Natural Guardian, LORNA SMITH, to be unlawfully assaulted and battered, without cause or provocation.

118. The aforesaid assault and battery were caused by defendants, THE CITY OF NEW

YORK, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities, while acting within the scope of their employment by defendant, THE CITY OF NEW YORK.

119. As a result of the aforesaid assault and battery, infant-plaintiff, [REDACTED] [REDACTED] was severely and seriously injured, both physically and mentally and is entitled to damages in excess of the monetary jurisdictional limits of all lower courts.

**SECOND CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR FALSE ARREST UNDER NEW YORK LAW
FOR INFANT-PLAINTIFF.** [REDACTED]

120. Infant-plaintiff, [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

121. As a result of the aforesaid conduct by defendants, plaintiff was subjected to illegal, improper and false arrest by the defendants, and caused to be falsely detained, and confined without probable cause, privilege or consent.

122. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, he was put in fear for his safety, and he was humiliated and subjected to handcuffing and other physical restraints, without probable cause.

123. As a result of the foregoing infant-plaintiff, [REDACTED] was caused to sustain serious physical and emotional injuries and is entitled to damages in an amount exceeding the monetary jurisdictional limits of all lower Courts.

**THIRD CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR NEGLIGENT HIRING, TRAINING, AND RETENTION UNDER NEW YORK
LAW FOR INFANT-PLAINTIFF.** [REDACTED]

124. Infant-plaintiff, [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

125. Defendant, THE CITY OF NEW YORK, and the New York City Police Department,

through their agents, servants, and/or employees, were negligent in the screening, hiring, training, retention and supervision of its employees and failed to take such necessary and proper steps as to prevent the occurrence described above.

126. As a result of the foregoing, plaintiffs liberties was restricted for an extended period of time, he was put in fear for his safety, and he was humiliated and subjected to handcuffing, and other physical restraints, without probable cause, privilege, or immunity.

127. By reason of the foregoing, infant-plaintiff, [REDACTED] is entitled to damages in excess of the monetary jurisdictional limits of all lower courts.

**FOURTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS
UNDER NEW YORK LAW FOR INFANT-PLAINTIFF,**

128. Infant-plaintiff, I [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

129. The aforementioned conduct, including but not limited to the aforementioned restriction of plaintiffs liberties for an extended period of time, placing the plaintiff in fear for his safety, and humiliating and subjecting the plaintiff to handcuffing, and other physical restraints, were extreme and outrageous, and exceeded all reasonable bounds of decency.

130. The aforementioned conduct was committed by the individually named defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

131. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

132. The aforementioned conduct was intentional and done for the sole purpose of causing severe emotional distress to plaintiff.

133. As a result of the aforementioned conduct, plaintiff suffered severe emotional distress, and physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

FIFTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR RELIEF FOR DEPRIVATION OF FEDERAL RIGHTS UNDER 42 U.S.C. § 1983
FOR INFANT-PLAINTIFF, [REDACTED]

134. Infant-plaintiff, [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

135. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

136. All of the aforementioned acts deprived infant-plaintiff, [REDACTED] of the rights, privileges and immunities guaranteed to citizens of the United States by the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

137. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers with all the actual and/or apparent authority attendant thereto.

138. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

139. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

SIXTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR FALSE ARREST UNDER 42 U.S.C. § 1983
FOR INFANT-PLAINTIFF, [REDACTED]

140. Infant-plaintiff, [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

141. As a result of the aforesaid conduct by defendants, plaintiff was subjected to illegal, improper and false arrest by the defendants and caused to be falsely detained, and confined without

any probable cause, privilege or consent.

142. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, he was put in fear for his safety, and he was humiliated and subjected to handcuffing and other physical restraints, without probable cause.

**SEVENTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR RELIEF FOR UNLAWFUL SEARCH UNDER 42 U.S.C. § 1983
FOR INFANT-PLAINTIFF,**

143. Infant-plaintiff, D [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

144. As a result of the foregoing, infant-plaintiff, I [REDACTED] was subjected to an unreasonable and intrusive search of his person and his home that shocks the conscience in violation of his rights to due process and to be free from unreasonable search, as secured by the Constitution of the United States.

145. As a result of the aforesaid conduct by defendants, plaintiff's person and possessions were illegally, improperly, and unreasonably searched without a valid warrant, probable cause, privilege or consent, in violation of his constitutional rights as secured by the United States Constitution.

**EIGHTH CAUSE OF ACTION RELATED TO THE JUNE 4, 2013 INCIDENT
FOR RELIEF FOR MUNICIPAL LIABILITY UNDER 42 U.S.C. § 1983
FOR INFANT-PLAINTIFF,**

146. Infant-plaintiff, D [REDACTED] repeats, reiterates, and realleges each and every allegation set forth above with the same force and effect as if fully set forth herein and at length.

147. Defendants arrested and incarcerated infant-plaintiff, I [REDACTED], in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize plaintiff's liberty, well-being, safety and constitutional rights.

148. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials, with all the actual and/or apparent authority

attendant thereto.

149. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

150. Those customs, policies, patterns, and practices include, but are not limited to:

- i. requiring officers to make a predetermined number of arrests and/or issue a predetermined number of summonses within a predetermined time frame;
- ii. requiring precincts to record a predetermined number of arrests and/or issue a predetermined number of summonses within a predetermined time frame;
- iii. failing to take any measures to correct unconstitutional behavior when brought to the attention of supervisors and/or policy makers;
- iv. failing to properly train police officers in the requirements of the United States Constitution.

151. The aforesaid customs, policies, usages, practices, procedures and rules of the city of New York and the New York City Police Department directly cause, *inter alia*, the following unconstitutional outcomes:

- i. arresting individuals regardless of probable cause in order to inflate the officer's arrest statistics;
- ii. arresting individuals regardless of probable cause in order to positively affect precinct-wide statistics;
- iii. falsifying evidence and testimony to support those arrests;
- iv. falsifying evidence and testimony to cover up police misconduct;
- v. subjecting individuals to intrusive strip searches in the absence of particularized suspicion.

152. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constitute a deliberate indifference to the safety, well-being and constitutional rights of infant-plaintiff, [REDACTED]

153. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted a deliberate indifference to the safety, well-being and constitutional rights of plaintiff.

154. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by plaintiff as alleged herein.

155. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by plaintiff as alleged herein.

156. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, plaintiff was incarcerated unlawfully.

157. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of plaintiff.

158. Defendants, collectively and individually, while acting under color of state law, acquiesced in a pattern of unconstitutional conduct by subordinate police officers, and were directly responsible for the violation of plaintiff's constitutional rights.

159. All of the foregoing acts by defendants deprived plaintiff of federally protected rights, including, but not limited to, the rights:

- i. not to be deprived of liberty without due process of law;
- ii. to be free from seizures and arrest not based upon probable cause;
- iii. to be free from search not based upon the constitutionally mandated level of cause or suspicion;
- iv. to be free from unwarranted and malicious criminal prosecution;
- iv. to receive equal protection under the law.

WHEREFORE, the plaintiffs demand:

- a. judgment awarding damages on the causes of actions detailed above in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- b. costs of this action, including reasonable attorney's fees to the plaintiffs pursuant to the Civil Rights Attorney's Fees Awards Action of 1976, 42 U.S.C. §1988 (1976); and

c. interest, along with the costs and disbursements in this action, together with such other and further relief this Court deems just and proper.

Dated: New York, New York
November 18, 2013

By:

OKUN, ODDO & BABAT, P.C.


Adam D. Polo, Esq.
Attorneys for Plaintiffs
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New York, New York 10018
(212) 642-0950
File: 9865

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

[REDACTED] an infant, by his Mother and Natural Guardian, LORNA SMITH, and LORNA SMITH, individually,

Plaintiffs,

- against -

THE CITY OF NEW YORK, POLICE OFFICER ABRAHAM VILLAVIZAR, Shield No. 08178, Individually and in his Official Capacity, and POLICE OFFICERS "JOHN DOE" # 1-10, Individually and in their Official Capacities,

Defendants.

Index No:

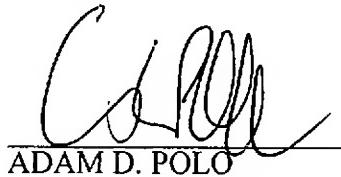
VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the Courts of the State of New York, hereby affirms under the penalties of perjury as follows:

That affirmant is the attorney for the plaintiff in the within action; that affirmant has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to affirmant's knowledge, except the matters stated to be alleged on information and belief, and that those matters affirmant believes to be true. The reason this verification is made by affirmant and not by the plaintiff is that the plaintiff does not reside in the County in which affirmant maintains an office. The grounds of belief as to all matters not stated upon affirmant's knowledge are documents, correspondence and records maintained in affirmant's files and conversations and conferences had with the plaintiff.

Dated: New York, New York
November 18, 2013



ADAM D. POLO